IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH.

F.A.O. No. 396 of 1989
Date of Decision : 30.8.2006

Smt. Parkash Kaur and others ..Appellants

Versus

Gurmail Singh and others ..Respondents

CORAM:- **Hon'ble Mr. Justice H.S.Bhalla**

Present:- Mr. P.N.Makani, Advocate,
For the appellants.

Mr. H.P.S.Bhinder, Advocate
For respondent No.1-Gurmail Singh.

H.S.BHALLA,J.

By this common judgment, I shall be disposing of two appeals, being F.A.O. No. 396 of 1989 filed by the appellants-claimants for enhancement of compensation, whereas appeal being F.A.O. No.447 of 1989 filed by Gurmail Singh and Bhura Singh, the driver and owner of the tractor bearing registration No. HRN-2681, praying for setting aside the award passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as the "Tribunal") vide which the compensation was awarded to the legal heirs- respondent Nos. 2 to 4, the minor sons and daughter, except Parkash Kaur, respondent No.1, the widow of deceased Karnail Singh, who died in a vehicular accident. Both these appeals arise out of the same impugned award dated 30.1.1989 passed by the Tribunal and are being heard together. However, for the sake of convenience, facts are being extracted from F.A.O. No. 396 of 1989.

It is unnecessary to burden my award with the facts of the case,inasmuch as, these have been, in detail, recapitulated by the learned tribunal. However, the facts required to be noticed for the disposal of this

appeal are that on 2.1.1987 Karnail Singh (deceased) was traveling in a tractor bearing registration No. HRN-2681 being driven by Gurmail Singh respondent No.1. The tractor had started from Mandi Dabwali and Karnail Singh was sitting on the right side (mudguard) of the tractor. When the tractor reached near village Masita, it dashed against another tractor, which was coming from the opposite side and on account of which, Karnail Singh fell down in between the space of the tractor and trolley. Resultantly, Karnail Singh was run over by the tyres of the trolley. It has been specifically pleaded in the petition that at the time of accident, tractor bearing registration No. HRN-2681 was being driven at a very fast speed, by virtue of which, the accident took place due to rash and negligent driving on the part of Gurmail Singh, a tractor driver. It has also been pleaded in the petition that Mangtu Ram and Daulat Ram were sitting in the tractor trolley at the time of accident and they had asked Gurmail Singh to stop the tractor after the accident, but he took the same to the village without caring for Karnail Singh. The First Information Report was lodged by Narinder Singh, Lambardar of village Masita on 3.1.1987. Hence, this petition.

In the written statement filed by the respondents, it has been specifically pleaded therein that the accident took place due to the negligence of Gurmail Singh and also by rash and negligent driving on the part of the driver of the other tractor; deceased Karnail Singh was also at fault. Insurance Company-respondent No.3 although admitted this fact that the offending tractor was insured on the date of accident, but it was pleaded that the policy for insurance did not cover the risk of a gratuitous passenger and as such, they were not liable to pay compensation, if any.

The learned Tribunal, after framing of issues and appreciating the ocular as well as documentary evidence produced by the parties on the record of the case, has awarded compensation to the respective claimants

in the claim petitions. For the facility of reference, it is essential to reproduce the operative part of the award dated 30.1.1989, which is as follows:-

> " In view of my findings recorded above, petitioner Nos. 2 to 4 are entitled to Rs.32,000/- as compensation for the death of Karnail Singh. They are also entitled to interest at the rate of 12% per annum from the date of filing of the petition i.e. 10.3.1987. No order as to costs. Memo of costs be prepared. Record be consigned."

I have heard the learned counsel for the parties and have also gone through the record of the case.

Learned counsel appearing for the appellants has contended that the learned Tribunal has not taken into consideration the testimony of these two eye witnesses, namely Mangtu Ram and Daulat Ram (PW-5 and PW-6), who were got examined by the appellants-claimants before the learned tribunal. The learned tribunal has observed in his award that they were not present at the time of occurrence. Learned counsel has also brought to the notice of the court the factum of accident, which has been admitted by the respondents in their written statement and as such, the learned Tribunal on the basis of the admission made in the written statement, has held that since the accident has been admitted by the respondents in their written statement, therefore, the accident is held to be proved, but at the same time, the learned tribunal posed a question before itself as to how and in what manner and circumstances, the accident took place and who was responsible for that, out of the two drivers of which tractors, these were the questions, which were to be resolved by the learned tribunal on the basis of the material produced by both the parties before it. The learned tribunal, ultimately, after analyzing the oral as well as documentary evidence, has come to a conclusion that the accident took

place due to rash and negligent driving not only by the driver of tractor bearing registration No. HRN-2681 but also by rash and negligent driving on the part of the other driver and also on account of the fault of deceased Karnail Singh. Further, the learned tribunal held Karnail Singh negligent to the extent of 25% only since he was sitting on the mudguard of the tractor, whereas the drivers of both the vehicles were held liable jointly to the accident of 50%.

Learned counsel appearing for the appellants has not been able to point out any illegality or impropriety in the findings recorded by the learned tribunal on the basis of which, it could be inferred that these are required to be set right. I have gone through the award and find that the reasoning given by the learned tribunal on the point discussed above, is fair, correct and in consonance with the evidence available on the record. The same is hereby affirmed and does not call for any interference.

In case of Parkash Kaur, she was non-suited to the Tribunal since she had performed a kareva marriage with the younger brother of the deceased husband and this fact stands admitted by both the parties. Considering this aspect of the matter, the learned tribunal recorded a finding in his award that Parkash Kaur has performed the kareva marriage with Amar Singh, therefore, she is not dependent and as such, no amount of compensation was awarded to her. Moreover, learned counsel appearing for Parkash Kaur has not been able to point out as to how she was entitled to compensation irrespective of the fact that she had performed kareva marriage with the younger brother of the deceased husband. In the absence of any evidence or law on the record of the case, I find no infirmity or illegality in the finding recorded by the learned Tribunal and to my mind, the same is hereby affirmed and does not call for any interference.

So far as the prayer for enhancement of amount of compensation to the legal heirs of the deceased Karnail Singh is concerned, I again do not find any illegality in the finding recorded by the learned tribunal as he, after appreciating the evidence on record with regard to the age of the deceased, his income and dependency of the family, has rightly awarded the amount of compensation to the claimants, which, in my considered view, is just, fair and reasonable and calls for no interference.

In view of the above discussion, both the appeals, being F.A.O. No.396 of 1989 filed by the claimants for enhancement of compensation whereas appeal, being F.A.O. No. 447 of 1989 filed by the driver and owner of the offending tractor, fail and are hereby dismissed, with no order as to costs.

30.8.2006 (H.S.BHALLA)
VK JUDGE